HON'BLE SHRI G.S. SINGHVI, THE CHIEF JUSTICE

AND

HON'BLE SHRI JUSTICE C.V. NAGARJUNA REDDY

Writ Appeal No.1267 of 2006

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Between:

M.V.V.Satyanarayana

……Appellant

And

Govt of A.P., rep., by
The Assistant Director of Mines and Geology,
Manakamma Thota, Karimnagar – 505 202
and two others

……Respondents

:: JUDGMENT ::

Counsel for the Appellant : Shri Prasad Rao Vemulapalli

December 04, 2006

Per G.S. SINGHVI, CJ

This appeal is directed against order dated 28-09-2006 passed by the learned Single Judge in WVMP No.916 of 2005, whereby he vacated ad interim order dated 30-08-2004 passed in WPMP No.19995 of 2004 (Writ Petition No.15414 of 2004).

The appellant is a contractor. On 14-8-1995, he entered into an agreement with South Central Railway for construction of New B.G. single line between Peddapalli and Karimnagar. This included construction of bridges, earth work in embankment etcetera. In the process of execution of the contract, the appellant utilized morrum/gravel. This appears to have been done without obtaining the requisite permit/licence and without paying seigniorage fee as per the Andhra Pradesh Minor Mineral Concession Rules, 1966 (for short, 'the Rules'). When this was discovered by the authorities of the Mines and Geology Department, Assistant Director of Mines and Geology, Manakamma Thota, Karimnagar (hereinafter described as 'the Assistant Director') sent letters dated 2-4-1997, 1-5-1997 and 22-5-1997 to the appellant requiring him to produce the documents showing payment of seigniorage fee and indicated that if he had not paid the required fee, then action may be initiated under G.O.Ms.No.243, dated 8-5-1986 by imposing five times penalty together with normal seigniorage fee. The Assistant Director also asked the appellant to obtain temporary permit on payment of advance seigniorage fee for the quantities of morrum/ gravel used. In reply to one of the communications sent by the Assistant Director, the appellant sent letter dated 9-9-1997, whereby he disputed the demand of Rs.4,00,000/- towards seigniorage fee. This was repeated by him in his

letter dated 15-9-1997. In the second letter, the appellant also stated that he had used only 12% gravel for which seigniorage fee was payable and that he had already paid Rs.5,000/- towards 1000 cum. gravel. For the balance 3800 cum. of gravel mix, he forwarded a Demand Draft of Rs.19,000/-. After some correspondence, Regional Vigilance and Enforcement Officer, Karimnagar sent letter dated 1-11-1997 to the appellant indicating that he had used 39,375 cum. of morrum without obtaining permit from the Assistant Director, which was in violation of Rule 26(1) of the Rules and, therefore, he was liable to pay five times the normal seigniorage fee in addition to the normal fee leviable under the Rules. Accordingly, he was directed to pay Rs.3,93,750/-. After some correspondence, the appellant sent letter dated 9-10-1998 to the Regional Vigilance and Enforcement Officer stating therein that the total seigniorage charges payable by him comes to Rs.3,45,062.20p., out of which he had already paid Rs.37,050/- and the remaining liability was Rs.3,08,012.20p. He also expressed his willingness to pay the balance amount subject to certain conditions.

It appears that even after having admitted his liability to pay the seigniorage fee, the appellant did not tender the amount to the concerned authority of the Mines and Geology Department. Therefore, penalty of Rs.18,51,780/- was imposed on him under Rule 26(3)(iii) of the Rules. Vide his letter dated 3-1-2000, the Assistant Director called upon the appellant to pay the amount of seigniorage fee and penalty within 15 days. At that stage, the appellant filed Writ Petition No.1030 of 2000 along with WPMP. Nos.1309 and 1310 of 2000 for suspension of notice dated 3-1-2000 issued by the Assistant Director and also for issue of a mandatory direction to the Deputy Chief Engineer (Construction/Survey), South Central Railway to pay the amount of the

final bill after deducting Rs.3,33,305/-. By an order dated 28-1-2000, a learned Single Judge, after taking cognizance of the statement made by the counsel for the appellant that his client is ready and willing to pay seigniorage fee amounting to Rs.3,33,305/-, stayed notice dated 3-1-2000. For the sake of reference, the prayer clause of Writ Petition No.1030 of 2000 and the relief extract of order dated 28-1-2000 passed by the learned Single Judge are reproduced below:

"Prayer Clause

It is, therefore, prayed that this Hon'ble Court may be pleased to (a) pending disposal of this writ petition suspend the notice issued by respondent No.3 vide Lr.No.699/D/92 dated 3-1-2000, (b) to direct respondent No.2 to deduct an amount of Rs.3,33,305/- from the final bill amount due to me, (c) to direct respondent No.2 to pay the balance amount and pass such further or other orders as this Hon'ble Court may deem fit and proper in the circumstances of the case and in the interest of justice."

"Order

The learned counsel for the petitioner submits that the petitioner is willing to pay the seigniorage fee, which, according to him, is Rs.3,33,305/-. In the circumstances, the petitioner is permitted to pay the admitted amount of seigniorage within a period of 15 days from today and there shall be interim stay of proceedings dt.3-1-2000. Notice."

After having succeeded in persuading the learned Single Judge to pass the above reproduced order, the appellant sent communication to the Assistant Director, Mines and Geology that the amount of Rs.3,33,305/- may be recovered from the Railways. This suggestion was rejected by the Assistant Director vide his letter dated 3-2-2000.

When the writ petition was listed for final hearing before the Court on 4-3-2004, counsel appearing for the appellant made a

statement that the writ petition has become infructuous. In view of his statement, the Court passed the following order:

> "Learned counsel for the petitioner states that the writ petition has been rendered infructuous. The same is dismissed as having become infructuous. Interim order is vacated. No costs."

After disposal of the writ petition, the Assistant Director issued demand notice dated 30-6-2004 and called upon the appellant to pay penalty and other dues amounting to Rs.21,85,086/-. The relevant extracts of that notice are reproduced below:

> " As per this office records and the information furnished by Railway authorities, your company has utilized the following minor minerals without payment of advance seigniorage and as such liable for payment of 5 times penalties as per Rule 26(3)(iii) of A.P.M.M.C. Rules, 1966.

Mineral Quantity (in cum)	Normal Seigniorage	5 Times Penalty	Amounts Already paid	Balance due
Before July 1996				
Stone & metal – 394.000				
Sand – 168.000				
Gravel - 17000				
After July,1996	370356/-	1851780/-	37050/-	2181086/-
Stone & Metal- 497.02				
Sand – 221.30				
Gravel – 26006.02				

> In view of the above circumstances, you are hereby requested to pay the above mineral revenue dues Rs.21,85,086/- within 15 days and submit the original challan in this office."

The appellant protested against the demand of penalty by stating that he has already deposited the seigniorage fee. His reply did not convince the Assistant Director, who again issued notice dated 31-7-2004 for payment of the balance amount of Rs.18,51,780/-. At that stage, the appellant filed Writ Petition No.15414 of 2004 for quashing notice dated 31-7-2004. In the affidavit filed by him, the appellant pleaded that the authorities of the Mines and Geology Department do not have the jurisdiction to impose penalty under Rule 26(3)(iii) of the Rules. He also relied on G.O.Ms.No.23 and South Central Railway's Circular dated 21-1-2000 for contending that he is not liable to pay the penalty. By an order dated 30-8-2004 passed in WPMP.No.19995 of 2004, a learned Single Judge stayed the recovery of the penalty amount. On notice, respondent Nos.1 and 2 filed WVMP.No.916 of 2005 for vacating the interim order. After hearing counsel for the parties and perusing the record and taking note of the fact that the appellant has not questioned legality of demand notice dated 30-06-2004, the learned Single Judge vacated the ad interim order.

Shri Prasad Rao Vemulapalli, learned counsel for the appellant argued that the levy of penalty under Rule 26 (3) (ii) is without jurisdiction, because his client had paid seigniorage charges as per the Rules. He submitted that the reason assigned by the learned Single Judge for vacating the interim order viz., the appellant's failure to challenge demand notice dated 30-06-2004 is legally untenable because immediately after receipt of the demand notice, his client submitted a representation against the demand. Learned counsel then argued that the levy of penalty of Rs.18,51,780/- on the ground of delayed payment of seigniorage fee of Rs.3,33,305/- should be treated as wholly arbitrary and the interim order passed by the Single Bench

should be restored.

In our opinion, there is no merit in the arguments of the learned counsel and the appeal is liable to be dismissed. The facts brought on the record of the case clearly show that penalty had been imposed by the Assistant Director vide his letter dated 3-1-2000. The appellant challenged the same in Writ Petition No.1030 of 2000, which, as mentioned above, was disposed of as infructuous in view of the statement made by his counsel. It is, thus, clear that the appellant did not pursue his challenge to the demand of penalty created in the year 2000. Therefore, it is not possible to find any fault with demand notice dated 30-6-2004 issued by the Assistant Director. In any case, the appellant cannot succeed in the writ petition because he has not made a prayer for quashing notice dated 3-1-2000 and 30-6-2004.

We are further of the view that the very maintainability of the writ petition filed by the appellant is seriously questionable not only because he did not pursue his challenge to the levy of penalty in 2000, but also a statutory remedy of appeal is available to it under 35 of the Rules. The admission of the writ petition will not debar the respondents from seeking dismissal of the writ petition on the ground that the appellant has failed to avail the statutory alternative remedy. However, we do not want to express any conclusive opinion on this issue because the writ petition filed by the appellant is pending adjudication before the learned Single Judge.

There is another reason for our disinclination to entertain the appellant's prayer. Admission of the writ petition indicates that the appellant has a prima facie case. However, that, by itself, is not sufficient for granting stay because the other three elements viz., the balance of convenience, irreparable injury and public interest are not in favour of staying the demand of penalty created by the competent

authority more than six years ago. If at all the writ petition is ultimately allowed and it is held that the penalty imposed by the competent authority is legally untenable, the Court may direct the respondents to refund the amount of penalty, which the appellant may have deposited in the meanwhile. The Court may also order payment of interest if it is found that the action of the competent authority to impose penalty was totally unwarranted. Therefore, the element of balance of convenience is clearly against the grant of stay.

As a sequel to the above, we hold that the learned Single Judge did not commit any error by vacating the interim order.

In the result, the appeal is dismissed.

While dismissing the appeal, we make it clear that it will also be open to the appellant to choose his option and avail the statutory remedy of appeal under Rule 35 of the Rules.

As a sequel to dismissal of the appeal, WAMP No.2663 of 2006 filed by the appellant for interim relief is also dismissed.

G.S.SINGHVI, CJ

C.V.NAGARJUNA REDDY, J

04-12-2006

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